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**EXTRAORDINARY**

**PART II—Section 3**

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**No. 53] NEW DELHI, THURSDAY, FEBRUARY 6, 1958/MAGHA 17, 1879**

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**ELECTION COMMISSION, INDIA**

**NOTIFICATION**

*New Delhi, the 1st February 1958/Magha 12, 1879, Saka*

**S.R.O. 499.**—Whereas the election of Shri Manak Lal as a member of the House of the People from the Mandsaur constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Umashanker Muljibhai Trivedi, of 11 Neemuch Cantonment, Madhya Pradesh;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

**IN THE ELECTION TRIBUNAL RATLAM, MADHYA PRADESH**

**ELECTION PETITION No. 1/57.**

**E. P. No. 62/57.**

Before, Shri M. K. Kaul, M.A., B.Sc., LL.B. Member Election Tribunal, Ratlam.

Umashanker Muljibhai Trivedi of 11 Neemuch Cantonment, Madhya Pradesh—*Petitioner.*

**Vs.**

1. Shri Manaklal of Rampura.
2. Shri Kok Singh, Mantri Ram Rajya Parishad, Mandsaur. *Exparte.*
3. Shri Shyam Singh Dalauda Sugar Mill, Dalauda. *Exparte.*
4. Shri Shivdarshanlal of Mandsaur. *Exparte.—Respondents.*  
Shri Hajarimal }  
Shri Shantilal } *Pleader for Appellant.*  
Shri Bhanwarlal Nahta and Shri S. N. Pande for Respondent No. 1.

## **ORDER**

In this Election Petition Shri Uma Shanker Trivedi a candidate for election to the House of the People from the Mandsaur Parliamentary Constituency seeks to set aside the election of respondent No. 1 Shri Manak Lal the successful candidate, on the grounds of commission of various corrupt practices which need not be mentioned in detail here, and has further sought the relief that he should be declared duly elected. The election was contested by the petitioner and the four respondents, and respondent No. 1 was declared duly elected.

2. The petition was contested only by respondent No. 1 who alone filed his written statement. Other respondents were declared *exparte*. Respondent No. 1 raised certain objections in his written statement relating to the un-maintainability of the petition. Issues Nos. 58 and 59 were raised to dispose of these objections. At the time of arguments Mr. Nahta learned counsel for respondent No. 1 stated that he did not wish to press issue No. 59. Consequently arguments were heard on issue No. 58 only. Mr. Shantilal appeared for the petitioner.

3. Issue No. 58 is as under:—

Whether the security deposit of Rs. 1,000 has not been deposited in accordance with section 117 of the R. P. Act. ....Petitioner.

Mr. Nahta pointed out that the provisions of S. 117 R. P. Act are mandatory and must be strictly complied with. The Treasury receipt (a certified copy of which has been sent with the petition) must, among other things, show that the deposit has been made by the petitioner himself and that it has been made as security for costs of the petition. The receipt however does not show on the face of it, the purpose for which the deposit has been made. It also shows that the deposit has been made by one Mr. K. Y. Borkar on behalf of the petitioner. The receipt does not show, that Mr. Borkar had the authority to fill in this receipt and make this deposit on behalf of the petitioner. The Election law does not require that these contests should be financed by interested persons who simply want to harass the successful candidate by engaging him in unnecessary and wasteful election contests. It is therefore necessary that the receipt should show that the deposit has been genuinely made by the petitioner himself or by some one on his behalf who has been duly authorised to make this deposit. As the receipt does not fulfil these two mandatory conditions required by S. 117 the defect is fatal and there is no alternative for this Tribunal but to dismiss it *in limine*.

4. In reply Mr. Shantilal learned counsel for the petitioner, urged that there had been substantial compliance of the requirements of S. 117. He pointed out that Mr. Borkar was Barrister Trivedi's clerk, and had been authorised to present the petition before the Election Commission. Consequently he would be deemed to be authorised to make the deposit on behalf of Mr. Trivedi. He urged that the word used in S. 117 is 'him' and not 'himself'. 'Him' would include 'her' as well as an agent. He further contended that it was not necessary to state in the receipt that the deposit was made "as security for the costs of the petition" as the word 'shall' governed the phrase 'in favour of the Secretary to the Election Commission' only. The words that followed this phrase namely 'as security for the costs of the petition' were a surplusage because under the scheme of the act a deposit under S. 117 could only be utilized towards the costs of the petition and for no other purpose.

5. After the arguments were concluded on 1st January, 1958, and the case was reserved for orders, Shri Trivedi submitted an application on 2nd January, 1958, saying that he had been taken by surprise by the points raised by Mr. Nahta, and wanted a week's time to re-argue the matter; that he felt that both the points urged by Mr. Nahta depended for their decision on evidence; that he be allowed to lead evidence on them, and the objection be decided after taking this evidence into consideration.

6. Mr. Nahta resisted the request and urged that if Mr. Trivedi was not satisfied with the arguments of his counsel he could not make the present request until he had withdrawn the Vakalatnama of Mr. Shantilal. Mr. Nahta further pointed out that Mr. Trivedi's contention that he was taken by surprise was also not correct as on a previous date fixed for the hearing of these objections, Mr. Trivedi who was personally present, wanted to argue these points, and it was Mr. Nahta who had taken an adjournment. On that day Mr. Trivedi did not request the court that he wanted to lead any evidence. There could also be no question of his being taken by surprise as he was ready to argue on an earlier date. He therefore urged that the request must be refused.

7. Mr. Nahta's objections were no doubt well founded but as the contention of Mr. Trivedi that an objection under S. 117 of the Act was a mixed question of law and fact and could not be decided without taking evidence if the petitioner so desired appeared to me of some importance, I decided to hear the parties on this point alone. Arguments were accordingly heard on this point the same day.

8. Mr. Trivedi contended that he had in his possession a letter from the Secretary Election Commission from which it was clear that he considered the said receipt to be in order. This was in effect an exposition of S. 117 by a contemporary authority, and the rule of contemporary construction embodied in the maxim "*Contemporanea expositio est optima et fortissima in lege*" applied. He urged that this Tribunal could not ignore this contemporaneous construction and cited Note 216 of Crawford's 'The construction of Statutes' 1940 Edn. relevant portion of which is as under:—

"Where the meaning of a statute is in doubt the court may resort to contemporaneous construction, that is the construction placed upon the statute by its contemporaries at the time of its enactment and soon thereafter for assistance in removing any doubt. . . . As is obvious, the meaning given to the language of a statute by its contemporaries is more likely to reveal its true meaning than a construction given by men of another day or generation. Even words change in meaning with the march of time. And the meaning given by contemporaries can be revealed with no more certainty than by resort to the common usage and practice under the statute itself over a considerable period of time.

To be sure, contemporaneous construction may not be controlling, yet it is obviously entitled to considerable weight, especially where men have acted under a particular interpretation of the statute for a long time. Such a construction should not be rejected by the courts except for strong and forcible reasons, nor is such a construction to be lightly over turned. And, of course it must always be kept in mind as a basic requirements that contemporaneous construction can be used only where the statute is obscure or ambiguous, and its meaning can not be ascertained by resort to intrinsic matters."

9. In reply Mr. Nahta pointed out that as S. 117 stood, there was no ambiguity in it, which required to be explained and interpreted, and for which evidence of contemporaneous construction was needed. It was a self sufficient section and its language was perfectly clear. No question of interpretation was involved, but it was a question of approximation i.e., how closely the receipt approximated to the requirements of S. 117 so that it could be said that the aforesaid section had been substantially complied with. Mr. Nahta further contended that even if the acceptance of the receipt by the Secretary to the Election Commission amounts by implication to a construction of S. 117, it is not binding on this Tribunal. He referred to Note 219 of the same author where in it is stated that:—

"In as much as the interpretation of statutes is a judicial function, naturally the construction placed upon a statute by an executive or administrative official will not be binding upon the court. Yet where a certain contemporaneous construction has been placed upon an ambiguous statute by the executive or administrative officers who are charged with executing the statute, and specially if such construction has been observed and acted upon for a long period of time, and generally or uniformly acquiesced in, it will not be disregarded by the courts except for the most satisfactory, cogent or impelling reasons."

10. Mr. Nahta went on to point out that the wordings of S. 85 and 90(3) clearly show that even a decision on merits given by Secretary Election Commission under S. 85 has no binding force on the Tribunal whose powers under S. 90(3) are not fettered by any decision that might be taken under S. 85. Consequently the validity of a receipt could only be decided upon its contents, and not with the help of extraneous evidence.

11. I have carefully considered the arguments advanced on both sides, and I am of the view that the contention of Mr. Nahta is well founded and must prevail. Note 218 has, I think reference to judicial decisions only. Moreover the last lines of No. 218 are self explanatory and point out in no uncertain terms that the basic requirement for the application of this rule of construction is that the statute must be obscure or ambiguous and its meanings incapable of ascertainment by resort to intrinsic matters only. In the present case there is neither any ambiguity nor any obscurity in the language of S. 117, and it is not necessary to seek external aid for its interpretation. As pointed out by the same author under no circumstances should the interpretation placed upon a statute by an administrative or executive official alter its plain meaning. And where consideration is given to a departmental construction, in every instance such construction must be contemporaneous, consistent or uniform, and of long duration. The rule of contemporary construction has therefore no application to the facts of this case.

12. Again S. 85 of the Act provides that if the provisions of S. 81 or S. 82 or S. 117 have not been complied with, the Election Commission shall dismiss the petition after giving the petitioner an opportunity of being heard. There is no provision in the act for adducing evidence before the Election Commission. Thus the legislative intent is clear that the Election Commission must base its decision as to whether there has been compliance of these provisions or not entirely on a perusal of the contents of the petition and its enclosures. Consequently the question whether the receipt complies with the provisions of S. 117 or not is a question which the Election Commission must decide only by examining the receipt itself. It can not therefore be argued that at a later stage when the petition comes before the Tribunal the question develops into one requiring extrinsic evidence for its determination.

13. Shri Trivedi has brought to my notice a recent decision of the Ujjain Tribunal in Muti Ahmed Jafri Vs. Verendra Singh and other (Election Petition No. 196 of 1957). In this case the Tribunal allowed the petitioner to examine the accountant of the district

treasury who examined the original foil of the Treasury Challan and gave his opinion that the amount deposited could not under the circumstances of that case be drawn by the Secretary Election Commission.

14. With respect I disagree with the view taken of the matter in that case. I have already given my reasons for the view that for determining whether the treasury receipt complies with the requirements of S. 117 or not, the receipt itself must be examined and it alone is the deciding factor. The question before the Ujjain Tribunal was whether the amount was deposited in such form that it was available to the Commission for payment of costs to the successful party in case an order to that effect was passed by the Tribunal. This could be determined by examining the treasury receipt itself, and the opinion of the accountant about it was, in my opinion not admissible. I therefore decide this point in favour of respondent No. 1 and against the petitioner.

15. The next question is whether the receipt complies with the requirements of S. 117 of the Act or not. A perusal of the 'Treasury receipt' shows that in the first column the name of the person by whom money is tendered is given as K. V. Borkar. Mr. Trivedi's name is given in the second column which is meant for the name of the person on whose behalf money is deposited. Thus the receipt shows that the deposit was actually made by one Mr. Borkar on behalf of Mr. Trivedi. It however does not show that Mr. Borkar had any authority to make that deposit on behalf of Mr. Trivedi, and to fill in the deposit receipt. The authority given to him for the presentation of the petition was limited to that act only and exhausted itself after the presentation was made.

16. The second defect pointed out in the receipt is that in column 5 this deposit is shown to be 'deposits for Election Petitions'. It does not show that this deposit is made as security for the costs of this petition.

17. Now S. 117 of the R. P. Act is as under:—

"The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary of the Election Commission as security for the costs of the petition."

S. 90(3) of the act as it stands now runs as under:—

"The Tribunal shall dismiss an election petition which does not comply with the provisions of S. 81, S. 82 or S. 117 notwithstanding that it has not been dismissed by the Election Commission under S. 85."

18. In view of the provisions of the amended S. 90(3) the provisions of S. 117 have become mandatory. Now a mandatory enactment is an absolute enactment and must be fulfilled exactly. More over the statutory requirements of an election law must be strictly observed as an election contest is purely a statutory proceeding and not an action at common law.

19. Now according to the provision of S. 117 the Treasury receipt shall show:—

1. that a deposit of Rs. 1,000 has been made by him (i.e., petitioner).
2. that the deposit is made in a Government Treasury or in the Reserve Bank of India.
3. That the deposit is made in favour of the Secretary to the Election Commission.
4. And that the deposit is made as security for the costs of the petition.

The use of the word 'him' in preference to 'himself' is consistent with the construction that it is not intended to exclude a duly authorised agent of the petitioner. But it is not sufficient to show that money has been deposited on behalf of the petitioner.

There must also be a clear indication that the depositor is no other than the petitioner himself, and the person filling the Treasury receipt on his behalf and making the actual deposit in the treasury has the petitioner's authority to make the various endorsements in the receipt, and thus make the amount of deposit legally available to the Secretary of the Election Commission for payment in accordance with S. 121 R. P. Act. The receipt in this case does not show that Mr. Borkar had this authority. I am therefore of the view that in this respect there has been a non-compliance of S. 117.

20. Again, the receipt does not show the purpose for which the money has been deposited. S. 117 is the first section in chapter V of part VI of the Act. It begins with the title 'Costs and Security for Costs'. The marginal note to S. 117 also refers to 'Deposit of Security'. Thus particular emphasis is laid on the deposit being a deposit as security for the costs of the petition. It is not as if there are no other deposits under the Act. S. 34 refers to certain other deposits also. Consequently, until the receipt mentions that the deposit has been made 'as securities for the costs of the petition' it can not become available to the Secretary of the Election Commission for the purpose mentioned in S. 121. The

existing entry 'deposits for election petitions' is therefore a defective endorsement, and does not place the money at the disposal of the Election Commission beyond all future disputes, for the purpose mentioned in S. 121 of the Act. It must be remembered that any order as to costs under this part of the Act is executable like a decree by a Civil Court, and it is essential that an order of the Secretary of the Election Commission under S. 121 for payment from the security deposit must be a valid one deriving its authority from proper endorsements by proper person in the Treasury receipt. I am therefore of the view that in this respect also there has been a non-compliance of S. 117 of the Act.

21. Mr. Trivedi referred me to paras 12 and 13 of the judgment of the Ujjain Tribunal in which a reference is made to an un-reported decision of the Madras High Court in *Kurju Thavar Vs. P. Jayaram Reddiar*. No certified copy of this judgment was however produced before me. From paras 12 and 13 however, this decision appears to be clearly distinguishable as the discrepancy in that case was that the deposit was not made in favour of the Secretary of the Election Commission, but it was generally stated as Secretary for the Election Commission. This was considered by the High Court to be a substantial compliance of S. 117 read with S. 121 of the Act as the money had become available to him due to other entries made in the receipt itself.

22. The second case cited by the petitioner is the decision of the Election Tribunal Bhatinda in *S. Karnail Singh Vs. H. H. Raja Harinder Singh and others* (See the gazette of India of January, 22, 1957, part II-S. 3). This was a case in which the name of the Secretary to the Election Commission did not appear in the relevant column but the entry in column 4 clearly stated that the deposit was made with reference to S. 117 of the R. P. Act. The Tribunal held that this entry if paraphrased would mean that the deposit was made in favour of the Secretary of the Election Commission, and there was therefore, substantial compliance of the provisions of S. 117. This case is also distinguishable as there is a clear reference to S. 117 in the receipt.

23. Consequently, in view of my findings on the two objections I hold that there has been a non-compliance of S. 117 of the R. P. Act, 1951 and there is no alternative for me but to dismiss the petition under S. 90(3) of the Act 1951.

24. The petition is therefore dismissed. Respondent No. 1 will get Rs. 100 as costs from the petitioner.

(Sd.) M. K. KAUL,

15th January, 1958.

Member, Election Tribunal, Ratlam, M.P.

[No. 82/62/57.]

By Order,

A. KRISHNASWAMY AYYANGAR, Secy.

